IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr.Appeal 647 of 2000
Decided on: 27.09.2007

State of H P Appellant

Versus

Sudershan Kumar Respondent

Coram:

The Hon'ble Mr.Justice Surinder Singh.J.

Whether approved for reporting ?[1] *No.*

For the appellant : Shri D.S.Nainta, Deputy Advocate General.

For the Respondent Shri Naresh K. Thakur, Advocate.

Surinder Singh, J. (Oral)

The respondent was tried and acquitted by the by the Additional Chief Judicial Magistrate, Amb, District Una (H.P.) on 10.5.2000, for offences under Sections 279, 304-A and 201 of the Indian Penal Code, which has been assailed in this appeal on law and facts.

Heard and gone through the records of the case.

In brief the prosecution case is that on 17.5.1998 at about 7.30 p.m. at village *Karluhi*, the respondent while driving his Maruti van, bearing registration No.HP-24-0129, hit Hony Kumar, who was

[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ? yes***

standing on the road side, assisting in checking the air pressure in the bicycle of Ashwani Kumar. Hony Kumar was seriously injured and was immediately removed to local hospital, from where he was referred to Ludhiana but succumbed to his injuries on the way. The matter was reported to the police by Dharam Pal vide statement Ex.PA in which he did not disclose either the name of the respondent or registration number of the aforesaid Maruti van. According to him, he could identify the said driver if produced before him. But as PW1 Dharam Pal complainant could not identify the driver and stated that it was white coloured Maruti Van, being driven in high speed which had hit Honey Kumar. The said vehicle was taken into possession on 18.5.1998 by the police vide memo Ex.PC. In his cross-examination, he has further stated that he had seen the driver and could identify him, but further stated that Sachin and Uttam, who were present on the spot, assisting the deceased in pumping air to the tyres of bicycle did not disclose to him as to who was driving the vehicle at the time of accident. He has blown hot and cold with the same breath and has materially contradicted himself.

Though Sachin (PW2) has stated that it was the respondent, but in the cross-examination he had admitted that the injured was taken to the hospital in the Maruti van of the respondent and the Doctor in the

P.H.C. referred the injured to some other hospital and his father Dharam Pal requested the respondent to take him to C.M.C. Ludhiana but the respondent had shown his inability as his vehicle had gone of order. The respondent was arrested on 18.5.1998. Both these statements, referred to above, are contradictory to each other. Mushtak (PW3) in his cross-examination has stated that Dharam Pal was not there and then improved the statement that Dharam Pal had gone to the flour Mill, again stated that he had witnessed the incident in question. Further according to him, at about 10.p.m. he had disclosed the name and number of the Maruti van on the same day to the police, but in his statement before the police he had stated that Sudershan was driving the vehicle, he was confronted with his statement. Uttam Chand (PW6) has stated that though his statement was recorded on the third day of the incident but he had disclosed name of the respondent to the police. Again, when confronted with his statement, recorded under section 161 Cr.P.C., this fact was not mentioned therein. Whereas, Sat Pal (PW7) has not supported the case of the prosecution. According to Sat Pal (PW9), name of the respondent and number of the Maruti Vam was disclosed by Dharam Pal, Sachin, Mushtak and Ashwani to the police. In the cross-examination the witness has stated that the injured was not brought in the Maruti Van of the respondent to the hospital.

Ashwani Kumar (PW10) has deposed for the first line of the cross-examination that at the time of incident Dharm Pal was not on the spot. Further according to him, on inquiry it came to his notice that the respondent was driving the vehicle, which means that he had not seen the respondent driving the vehicle at the time of accident nor he disclosed from whom such inquiry was made. Identification parade of the respondent was conducted by S.I. Khub Ram on 19.5.1998 in the Police Station, whereas according to the aforesaid witnesses, they had already disclosed name of the respondent and registration number of the Maruti Van on the day of the alleged incident to the police. If that being so then there was no need to conduct the identification parade of the respondent on 19.5.1998 by the Police officer. S.I. Manohar Lal (PW 17) in his statement has deposed that he took the investigation on 22.5.1998 and the Maruti Van was taken into possession vide memo Ex.PW-11/A from Ramesh Chand to whom he had referred as accused.

On the critical examination of the aforesaid evidence, the investigation appears to be quite faulty and statements of prosecution witnesses are contradictory. Identity of the respondent is not established beyond reasonable doubt. Therefore, in the light of the aforesaid evidence which produces two views, the respondent cannot be convicted. Accordingly,

for the aforesaid reasons, I concur with the net result arrived at by the learned trial court for acquitting the respondent. Accordingly, the impugned judgment requires no interference.

For the reasons aforesaid the appeal is dismissed. The respondent is discharged of the bail bonds, entered upon by him at any stage, during the proceedings of the case.

September 27, 2007 (Surinder Singh),J.
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